

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

STEPHEN GUAJARDO
ROBERTA GARCIA-GUAJARDO,

Debtors.

Case No. 19-10540-TA13

**FIRST APPLICATION BY ATTORNEY FOR DEBTORS FOR
ALLOWANCE AND PAYMENT OF COMPENSATION**

COMES NOW Davis Miles McGuire Gardner, PLLC (Ron Holmes) (“Attorney”), former attorney for the Debtors, and submits this application for allowance and payment of compensation pursuant to Bankruptcy Code §§ 330, 503 and 507.

In support of this Motion, Attorney states the following:

1. Commencement of the Bankruptcy Case. On March 13, 2019, Debtors filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code. An order for relief on the petition was entered the same date as a matter of course. The case was has not yet been confirmed.
2. Debtors’ Employment of Attorney. Pursuant to local practice, employment applications are unnecessary for Chapter 13 Debtors’ attorneys. Debtors employed Attorney to represent them in all aspects of this bankruptcy case.
3. Prior Fee Applications by Debtors’ Counsel; Prior Compensation Received. This application is Attorney’s first and only application for compensation in this case. Attorney has not applied for allowance of compensation in the preceding 120 days. In this First Fee Application Attorney seeks compensation for services rendered from April 1, 2019 through present, in the amount of **\$9,810.40** consisting of \$8,761.25 for fees, \$359.20 for costs/filing fees

and \$689.95 for gross receipts tax. The overall application therefore is for the total sum of **\$9,608.67**. Attorney's billing statements are attached hereto as Exhibit A.

4. Services Rendered Were Actual and Necessary; Fee Charges are Reasonable.

Following its employment by Debtors, Attorney represented Debtors during the pendency of this bankruptcy case. The services rendered and the costs and expenses incurred by Attorney on behalf of Debtors during this First Fee Application Period, for which compensation is sought, were actual and necessary. The amount charged for fees is reasonable based on the nature, extent and value of the services and the amount of time spent providing the services. In addition, the fee charged by Attorney on behalf of Debtors is consistent with the hourly rates charged by attorneys with similar experience and expertise and similar to those charges for non-bankruptcy related matters.

5. Itemization of Fees and Costs and Description of Services Rendered. The services provided by Attorney in this First Fee Application Period are set forth in detail on the billing statements attached hereto as Exhibit A, which is incorporated herein by reference (the "Billing Statements"). The attached Billing Statements are cumulative and show all items and all charges for professional services, reimbursable costs and expenses; separately describes the services rendered and hours worked by each individual each day for each specific task performed during the First Fee Application Period; itemizes all expense charges; and, at the end of the Billing Statements, summarizes the total hours and total charges. The accounting of services, costs and expenses as set out in the Billing Statements is true and correct to the best of Attorney's knowledge, information and belief.

6. General Description of Services Rendered on Behalf of the Debtors. As more fully set out in the attached Billing Statements, in general Attorney services rendered for the

Debtors during the First Fee Application Period have included, among other things: Preparation and filing of schedules and statements; negotiations and dealings with creditors and the Trustee; Pre-Confirmation litigation of the case including representation in a pending Adversary Action; and attendance at multiple 341 meetings, compile information from client, review documents and prepare Schedules, Statements and related pleadings including negotiations with secured creditors and the Chapter 13 trustee. In addition, amendments were required regarding litigation involving Debtors' real property holdings.

7. Time Charged for Multiple Attorneys and Allocation of Responsibility. During the First Fee Application Period, Attorney worked a total of 22.95 hours of attorney time and 19.4 hours of legal assistant time for professional services rendered on behalf of Debtors. Notwithstanding this fact, if more than one attorney was involved in any task, only one attorney billed the time.

8. Billings Rates, Time Billed and Rates for Other Charges. During the Fee Application Period, the billing rates charged for attorneys and legal assistants were charged at Attorney's normal and customary billing rates also charged to non-bankruptcy clients, as follows:

<u>ATTORNEYS</u>	<u>HOURS BILLED (PER HOUR)</u>	<u>BILLING RATE BILLED</u>	<u>AMOUNT</u>
Ron Holmes	22.95	\$275.00	\$6,311.25
<u>LEGAL ASSISTANTS</u>	<u>HOURS BILLED (PER HOUR)</u>	<u>BILLING RATE BILLED</u>	<u>AMOUNT</u>
Andrew Potter	19.4	\$125.00	\$2,263.00

Attorney, in accordance with its customary billing practices, also charged for costs and expenses, including \$0.15 per page for in-house photocopying, \$0.50 per page for telecopies, and actual out-of-pocket expenses for other expenses such as deposition transcripts, out of town travel,

postage, long distance telephone and overnight mail. Summary of hours spent by user attached and incorporated hereto in Exhibit A.

9. Other Factors. Attorney also supports this First Fee Application with discussion of various other factors, as follows:

10. Expertise and experience in the area of bankruptcy of the attorneys rendering services to the Debtors. Before Attorney was retained by Debtors in August 2019, Attorney had been practicing law for twenty-two years during which time he had handled Chapter 7, 11, 12 and 13 cases. Between 1996 and 2019, Attorney handled thousands of bankruptcy cases. Attorney's hourly rate of \$275.00 per hour is reasonable given the experience and expertise in the area of bankruptcy. In the New Mexico bankruptcy community, hourly rates for attorneys who regularly handle bankruptcy cases ranges from \$150.00 per hour up to in excess of \$375.00 per hour. Accordingly, the \$275.00 per hour fee is a reasonable rate.

11. Method used to compute time charges. The minimum hourly billing was done in increments of 1/10th (.10) of an hour, which is the smallest billing increment utilized by attorneys.

12. Relative billing rates of attorneys for in-court and out-of-court hours. Given the hourly rate of \$275.00 per hour charged by Attorney, the billing rate was the same for in-court and out-of-court work performed and services provided.

13. Difficulty of case dealt with by Attorney. This case involved not only the typical issues accompanying most Chapter 13 bankruptcies, as amendments were required to Debtor's real property holdings. In addition, the Chapter 13 Trustee and Debtors' secured parties have contested and resisted Debtors' efforts to reorganize their debts and perform the proposed

Chapter 13 bankruptcy case. Debtors are also defendants in a pending Adversary action under cause number 19-1040-T.

14. Results Achieved and Benefit of the Results to the Estate. The services provided were necessary to the administration, or beneficial at the time at which the service was rendered toward the completion of this case, and getting this case prosecuted so that Debtors could restructure their debts and allow creditors to receive either payment in full or partial payment on their timely filed and allowed valid claims. Services provided were performed within a reasonable amount of time commensurate with the complexity, importance, nature of the problems, issues and tasks addressed. Efforts to negotiate an agreement as to the valuation of certain assets were essential to the estate which will ultimately result in assets to be included in distributions by the Chapter 13 Trustee.

15. Services Rendered Solely for the Debtors; No Fee Sharing Arrangement. All professional services for which allowance and payment of compensation is requested were performed by Attorneys for the Debtors and not on behalf of any creditor or any other committee or person. Attorney has not shared or agreed to share any compensation received or to be received by it for services rendered in or in connection with this case with any person except with employees of Attorney in the ordinary course of business.

16. Attorney Fees, Costs, and Tax are a Priority Administrative Claim. In the event this case gets either converted or dismissed, Attorney shall be entitled to be paid the full amount of Attorney's priority administrative claim directly from the Trustee. Attorney requests this Court to approve this First Fee Application and allow the claim as a Priority Administrative Claim.

WHEREFORE, Attorney respectfully requests that the Court allow, as a priority, administrative expense, the sum of **\$9,810.40** for the Fee Application Period, consisting of fees for professional services rendered in the amount of \$8,761.25, plus \$689.95 for gross receipts tax and \$359.20 for costs (postage and filing fee) leaving the balance of **\$9,810.40**. Attorney further requests that the Court authorize the Trustee to pay Attorney the entire unpaid balance of such amounts upon distribution of estate funds.

Respectfully submitted,

DAVIS MILES MCGUIRE GARDNER, PLLC

s/submitted electronically
Ron Holmes
Attorney for Debtors
320 Gold Ave. SW, Suite 1111
Albuquerque, NM 87102
Telephone: (505) 268-3999
Facsimile: (505) 243-6448

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was transmitted via electronic noticing to:

- Tiffany M. Cornejo courtemail@ch13nm.com, courtemailbu@ch13nm.com
- James C Jacobsen jjacobsen@nmag.gov, jotero@nmag.gov
- Eric Mark Sommer erics@sommerudall.com,
shelbys@sommerudall.com;jvw@sommerudall.com;baf@sommerudall.com
- United States Trustee ustpregion20.aq.ecf@usdoj.gov

and was served by first class mail, postage prepaid on the following parties in interest:

Stephen Guajardo and Roberta Garcia-Guajardo
P.O. Box 602
Belen, NM 87002-0602

Estevan Sanchez
P.O. Box 1984
Santa Fe, NM 87504-1984

Synchrony Bank c/o PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541

on this 14th day of August, 2019.

Electronically filed
Ron Holmes

Davis Miles McGuire Gardner, PLLC

Listing

Date	Prof	Matter ID/Client Sort Matter Description Narrative	Activity Code	Component Task Code	Units	Price	Value
Component: Fees							
Statement Initials: AP							
04/24/2019	AP	Review of filed Adversary Complaint and preparation of Answer [4.0]		Fees	4.00	125.00	500.00
04/25/2019	AP	Preparation of Answer to Adversary Complaint [1.0]		Fees	1.00	125.00	125.00
04/26/2019	AP	Preparation of Third Motion to Extend Deadline to File [.3]; Preparation of proposed stipulated Order on Third Motion [.3]		Fees	0.60	125.00	75.00
04/26/2019	AP	Preparation of bankruptcy petition documents [2.0]		Fees	2.00	125.00	250.00
04/26/2019	AP	Finalize, file and serve Answer to Adversary Complaint in bankruptcy court [.2]; Finalize, file and serve Motion to Extend Deadlines in bankruptcy court [.2]; Correspondence with trustee regarding request for concurrence on proposed Order to Extend Deadlines [.2]		Fees	0.60	125.00	75.00
04/26/2019	AP	Correspondence with admin regarding file set up [.2]		Fees	0.20	125.00	25.00
04/29/2019	AP	Finalize and submit proposed 3rd Order to Extend Deadlines to bankruptcy court for entry [.2]		Fees	0.20	125.00	25.00
05/03/2019	AP	Preparation of bankruptcy petition documents [4.5]		Fees	4.50	125.00	562.50

Davis Miles McGuire Gardner, PLLC

Listing

05/09/2019	AP	Meeting with client to discuss documents and information needed for bankruptcy case [.6]	Fees	0.60	125.00	75.00
05/09/2019	AP	Revisions to bankruptcy schedules and other supporting documents [2.0]	Fees	2.00	125.00	250.00
05/10/2019	AP	Revisions to bankruptcy petition documents [.3]; Preparation of Amended Mailing List [.3]; Finalize, file and serve amended list in bankruptcy court [.2]	Fees	0.80	125.00	100.00
05/10/2019	AP	Preparation of Late Notice to Additional Parties [.3]; Finalize, file and serve Late Notice in bankruptcy court [.2]	Fees	0.50	125.00	62.50
05/10/2019	AP	Review of client documents and submission of required information to bankruptcy trustee [.4]	Fees	0.40	125.00	50.00

Davis Miles McGuire Gardner, PLLC

Listing

05/10/2019	AP	Review of file in preparation for upcoming meeting of creditors [.3]; Correspondence with client regarding requirements for meeting [.2]; Preparation of Notice of Deadline to Object to Motion for Valuation [.3]; Finalize, file and serve Notice in bankruptcy court [.2]	Fees	1.00	125.00	125.00
07/29/2019	AP	Receipt and review of missing years of tax returns [.4]; Correspondence to bankruptcy trustee with missing documents [.2]	Fees	0.60	125.00	75.00
07/30/2019	AP	Receipt and review of updated state tax returns with previously missing pages from client [.2]; Correspondence with attorney for NMTRD regarding filed tax returns [.2]	Fees	0.40	125.00	50.00

Statement Initials: AP	19.40	2,263.00
-------------------------------	-------	----------

Statement Initials: RH

Davis Miles McGuire Gardner, PLLC

Listing

04/11/2019	RH	Initial conference with client to discuss pending Bankruptcy filing; Review client's docket and brief review of Adversary action against client regarding same; Draft notes following meeting; [1.0]; Email to client with Bankruptcy worksheets and checklist [.25]	Fees	1.25	275.00	343.75
04/16/2019	RH	Receive and review email from client with confirmation of filing of Motion to Continue deadline for filing schedules and statements and payment to trustee of \$2000 for first payment due under the plan [.20]; Draft Entry of Appearance as counsel of record [.20]; File same with Court for entry [n/c]; Telephone call from client regarding appearance at 341 meeting without husband being present [.10]	Fees	0.50	275.00	137.50
04/17/2019	RH	Prepare for and appear at 341 Creditor's meeting with Chapter 13 trustee T. Cornejo; Telephone call to client regarding non-appearance due to problems with vehicle and no creditors present at meeting [1.0]	Fees	1.00	275.00	275.00
04/23/2019	RH	Receive and review email from opposing counsel T. Cornejo regarding proposed order to continue preliminary hearing on confirmation of Chapter 13 plan [.20]; Email approval for same [n/c]	Fees	0.20	275.00	55.00

Davis Miles McGuire Gardner, PLLC

Listing

04/24/2019	RH	Receive and review multiple emails from client regarding missing documentation	Fees	0.50	275.00	137.50
04/26/2019	RH	and answer to Adversary Complaint [.50] Receive and review multiple emails from and to client regarding remaining paperwork to be completed and deadline for same [.50]; Review, revise and finalize Third Motion to Extend time to file Schedules, Statements and Chapter 13 Plan [.25]; Review and finalize Answer to Complaint in Adversary action [.75]; Receive and review email from Court setting scheduling conference in Adversary action on Chapter 13 docket day [.20]	Fees	1.70	275.00	467.50
05/03/2019	RH	Receive and review Proof of claim filed by AAFES on unsecured claim [.10]	Fees	0.10	275.00	27.50
05/06/2019	RH	Review Petition and schedules in preparation for meeting with client to review and sign same; Review client's supporting documentation including credit report and bank statements; Revise all	Fees	0.50	275.00	137.50
05/08/2019	RH	Conference with client to review and sign Bankruptcy Schedules and Statements and Chapter 13 Plan; Revise same per client's instructions and supporting documentation	Fees	1.75	275.00	481.25
05/09/2019	RH	Receive and review multiple emails from client with additional creditors and income figures provided before filing remaining paperwork in case	Fees	0.40	275.00	110.00

Davis Miles McGuire Gardner, PLLC

Listing

05/10/2019	RH	Revise Chapter 13 Plan and Schedules and Statements per client's revisions [.75]; Draft Notice of objection period for plan filed after Petition [.25]; Telephone call to Clerk's office regarding updated mailing matrix and need to include same for Chapter 13 plan notice [.20]; Review and approve Notice to Added creditors from original disclosure [.20]	Fees	1.40	275.00	385.00
05/15/2019	RH	Receive and review secured Proof of claim filed by King Cross of Castleton London Bridge Community Association [.20]	Fees	0.20	275.00	55.00
05/15/2019	RH	Prepare for and appear at 341 Creditor's meeting with Chapter 13 trustee T. Cornejo (clients appeared late because went to wrong courthouse); Conference with client regarding issues raised in meeting and additional documentation for same [1.25]	Fees	1.25	275.00	343.75
05/17/2019	RH	Receive and review objection to confirmation of Chapter 13 plan by NMTR [.20]	Fees	0.20	275.00	55.00
05/20/2019	RH	Receive and review Proof of claim filed IRS on estimated and priority claims based on 2005 and other tax years [.20]	Fees	0.20	275.00	55.00
05/22/2019	RH	Receive and review Proof of claim from Bennetts Creek Home Owners Association on unsecured claim [.10]; Receive and review Proof of claim from 6632 Telegraph Road as creditor on unsecured claim [.10]	Fees	0.20	275.00	55.00
05/22/2019	RH	Receive and review email from trustee's office regarding missing 2018 State tax returns [.10]; Review file for same [.10]	Fees	0.20	275.00	55.00

Davis Miles McGuire Gardner, PLLC

Listing

05/24/2019	RH	Receive and review Proof of claim filed by Alicia Garcia as trustee for client's father's trust [.20]	Fees	0.20	275.00	55.00
05/30/2019	RH	Receive and review objection to confirmation of Chapter 13 plan filed by Chapter 13 trustee [.20]	Fees	0.20	275.00	55.00
06/03/2019	RH	Receive and review objection to confirmation of Chapter 13 plan filed by Anita Garcia [.20]	Fees	0.20	275.00	55.00
06/04/2019	RH	Prepare for and appear at Bankruptcy Court for preliminary hearing on confirmation with Judge Thuma and opposing counsel E. Sommer, J. Jacobsen and T. Cornejo [1.0]; Telephone call to client regarding need for proof of insurance on property and no lapse in same since owned [.30]	Fees	1.30	275.00	357.50
06/04/2019	RH	Receive and review email from client regarding past history and client's resistance to list secured party as loss payee [.20]; Reply by email regarding same and reasons for listing secured party [.25]	Fees	0.45	275.00	123.75
06/06/2019	RH	Reply by email to client's request for copies of all filed claims [.20]	Fees	0.20	275.00	55.00

Davis Miles McGuire Gardner, PLLC

Listing

06/11/2019	RH	Receive and review email from client with Insurance binder showing mortgagee as additional insured [.10]; Exchange multiple emails from and to client regarding fees paid to Jason Cline and stop payment for same [.90]; Email to opposing counsel E. Sommer with insurance proof [.10]; Telephone call from opposing counsel regarding same and possible settlement for all matters and mortgage for property versus Real Estate Contract [.20]	Fees	1.30	275.00	357.50
06/13/2019	RH	Receive and review email from opposing counsel E. Sommer regarding change to insurance policy to properly name title owner of home [.10]; Email to client regarding same [.10]	Fees	0.20	275.00	55.00
06/14/2019	RH	Receive and review multiple emails to and from client regarding insurance coverage and loss payee for opposing party [.20]; Reply to client regarding same [.20]	Fees	0.40	275.00	110.00
07/17/2019	RH	Receive and review email from client regarding missing tax returns and excuses for not completing same [.20]; Reply to client regarding same and new deadline for submitting same [.25]	Fees	0.45	275.00	123.75
07/22/2019	RH	Draft Motion to withdraw as counsel of record and Notice of deadline to object to same [.75]	Fees	0.75	275.00	206.25
07/25/2019	RH	Draft response to fee application by Jason Cline[.40]; File same with Court for entry [n/c]	Fees	0.40	275.00	110.00

Davis Miles McGuire Gardner, PLLC

Listing

07/26/2019	RH	Draft and revise fee application; Draft 21 day notice of objection deadline for same; Revise and finalize billing statements for attachment to applicatoin; Download mailing matrix from court; Review file	Fees	1.00	275.00	275.00
07/31/2019	RH	Receive and review letter from opposing counsel E. Sommer regarding proposed offer of settlement for client's review [.25]; Email to clients regarding same and request for comment [.25]	Fees	0.50	275.00	137.50
07/31/2019	RH	Receive and review reply filed by Jason Cline regarding fee application [.20]; Receive and review Order granting fee application despite response filed by clients [.10]; Email to Jason Cline regarding same and request to immediately set aside	Fees	0.55	275.00	151.25
08/06/2019	RH	indement [.25] Receive and review lengthy email from client regarding reasons for rejecting offer of settlement from opposing party [.25]; Reply by email regarding same including legal analysis for faulting reasoning in clients' impressions on inheritances and advice to accept offer of settlement [.75]; Further discussion via email on trust from father and appeals from same [.20]	Fees	1.20	275.00	330.00

Davis Miles McGuire Gardner, PLLC

Listing

08/08/2019	RH	Receive and review objection to Motion to withdrawal from representation filed by client [.20]; Receive and review email from client regarding provisions of trust and will of father; Review trust and will provisions for strength of case against step mother [.40]; Email to client regarding position on same and setting motion to withdraw from representation [.50]	Fees	1.10	275.00	302.50
------------	----	---	------	------	--------	--------

08/13/2019	RH	Draft and revise fee application; Draft 21 day notice of objection deadline for same; Revise and finalize billing statements for attachment to application; Download mailing matrix from court; Review file regarding same [1.0]	Fees	1.00	275.00	275.00
------------	----	--	------	------	--------	--------

Statement Initials: RH	22.95		6,311.25
Component: Fees	42.75		8,574.25

Component: Filing

Statement Initials:

05/10/2019	Paid To: Holmes, Ron	Filing	1.00	31.00	31.00
------------	----------------------	--------	------	-------	-------

Statement Initials:	1.00		31.00
Component: Filing	1.00		31.00

Component: Postage

Statement Initials:

05/10/2019	Postage	Postage	1.00	74.75	74.75
------------	---------	---------	------	-------	-------

08/13/2019	Postage	Postage	1.00	61.60	61.60
------------	---------	---------	------	-------	-------

Statement Initials:	1.00		136.35
----------------------------	------	--	--------

Component: copies

Statement Initials:

Davis Miles McGuire Gardner, PLLC

Listing

05/10/2019	Copies (1,035)	copies	1,035.00	0.15	155.25
08/13/2019	Copies (244)	copies	244.00	0.15	36.60

Statement Initials:
Component: copies
Component: Postage

Component: Tax

Statement Initials:

04/30/2019		Tax	1.00	196.19	675.22
------------	--	-----	------	--------	--------

Component: costs			1,034.42
Grand Total:	1,083.75		\$9,608.67